

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration of)	
Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Changes to the Board of Directors of)	CC Docket No. 97-21
The National Exchange Carrier Association)	
)	

**APPLICATION FOR REVIEW OF ACTION TAKEN PURSUANT TO DELEGATED
AUTHORITY**

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I. INTRODUCTION AND SUMMARY.

SBC Communications Inc., on behalf of itself and its wholly-owned subsidiaries Ohio Bell Telephone Company, Michigan Bell Telephone Company, and Indiana Bell Telephone Company (collectively, “SBC”), and pursuant to section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, respectfully requests that the Commission reverse the December 9, 2004, decision of the Wireline Competition Bureau (“Bureau”) to reject as untimely any revisions to a carrier’s Form 499-A Telecommunications Reporting Worksheet (“Form 499-A”) that would result in decreased contributions to federal support mechanisms if the revision is not submitted within 12 months of the due date of the original filing. Although the Bureau couches its decision as a mere “update” to the “Instructions to the Telecommunications Reporting Worksheet” that purportedly makes “procedural, non-substantive changes to the administrative aspects of the reporting requirements,”¹ the Bureau’s order establishes a new, substantive rule that affords disparate treatment to revisions depending on whether they would increase or decrease a carrier’s contributions – as discussed below, the Bureau imposed no limit on the obligation to file revisions if the revisions would increase a carrier’s contributions. The Bureau’s decision plainly reflects a substantive, value judgment about which Form 499-A revisions will be accepted more than one year after the original deadline, and thus determines who must contribute what to the universal service program. As such, the Bureau’s decision goes to the substance of the underlying program, and not merely to the “administrative aspects of the reporting requirements,

¹ *Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 98-171, 97-21, DA 04-3669 at paras. 1, 10 n.31. (rel. Dec. 9, 2004) (*Form 499-A Modification Order*).

such as ‘where and when worksheets are filed,’”² and, consequently, goes beyond the scope of the authority delegated to the Bureau.³

Even if the Bureau had authority to adopt a new, firm deadline for filing revised Form 499-As, its decision to impose such a deadline for revisions that would result in decreased contributions, but not increased contributions, is patently arbitrary and an abuse of discretion. Moreover, as explained herein, if allowed to stand, the Bureau’s decision would be profoundly bad policy, encouraging carriers not to correct errors in reported revenues on their Form 499-As. In addition, the Bureau’s remand to USAC of SBC’s six revised Form 499-As with directions to accept those filings only “if there is good cause to allow revisions beyond the deadline contained in the Instructions” is inconsistent with the rules and Instructions applicable to such revisions in effect at the time those revisions were filed. Accordingly, the Commission should reverse the Bureau’s decision, direct the Bureau to adopt uniform deadlines for filing revisions to Form 499-As irrespective of whether they would increase or decrease a carrier’s contributions to federal support mechanisms, and direct USAC to accept SBC’s and other carriers’ Form 499-A revisions insofar as those revisions included the requisite explanations and documentation.

II. BACKGROUND.

Over the past three years, SBC and almost 20 other carriers have filed with the Commission requests for review of decisions by the Universal Service Administrative Company (“USAC”) rejecting revised Form 499-As for prior years if the revisions would have resulted in reduced contributions.⁴ USAC routinely has accepted any revision that would result in increased contributions to federal support mechanisms.

² *Id.* at para. 9, citing *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Report and Order and Second Order on Reconsideration, CC Docket Nos. 96-45, 97-21, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*); *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements*, Report and Order, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 14 FCC Rcd 16602 (1999) (*Form Consolidation Order*); 47 C.F.R. § 54.711(c).

³ *Form Consolidation Order* at para. 40; 47 C.F.R. § 54.711(c).

⁴ *Form 499-A Modification Order* at Appendix A.

In SBC's case, on June 24, 2004, SBC submitted to USAC revised Form 499-As for each of the five Ameritech Operating Companies for 1999 through 2002 (reporting revenues from 1998 through 2001).⁵ SBC explained that it was submitting the revised forms to correct various errors on those companies' Form 499-As that it had only recently discovered when SBC was reviewing the accounting practices of each of its operating company subsidiaries to implement the Commission's Order to implement interim reforms to its universal service contribution methodology.⁶ SBC further explained that these errors resulted from mistakes in the way the Ameritech companies mapped certain of their financial accounts to various lines on the Form 499-A during the years in question, and that these errors resulted in overstatements and understatements of those companies' interstate revenues and, concomitantly, their Universal Service Contribution bases for 1999 through 2002. SBC further reported that these errors resulted in a net underpayment by the Ameritech Operating Companies of \$2.8 million, and submitted a payment in that amount concurrently with the corrected Form 499-As for 1999-2002.

On September 9, 2004, USAC sent letters to three of the Ameritech Operating Companies – Michigan Bell, Indiana Bell and Ohio Bell – notifying them that it rejected six of the 18 revised 499-As filed by SBC for the years in question; USAC accepted the other 12 revised forms. Upon reviewing these letters, it became clear that USAC accepted the 12 revised Form 499-As that showed net underpayments to USAC by the affected companies, and rejected only those revised forms that showed net overpayments in universal service contributions by three of the Ameritech Operating Companies, and which would have resulted in a credit to those companies. USAC thus accepted any revised form that produced additional USF contribution payments, but rejected any revisions that would have resulted in credits – including to the very

⁵ The Ameritech Operating Companies include Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, Ohio Bell Telephone Company, and Wisconsin Bell Telephone Company.

⁶ *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlines Contributor Reporting Requirements Associated with Administration of the Telecommunications Relay Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 51-166, 98-170 and NSD File No. L-00-72, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002).

same companies. USAC's stated basis for rejecting the six revised Form 499-As was that the revisions were not submitted within one year of the original submission.

On November 9, 2004, SBC appealed, asking the Commission to reverse USAC's decisions to reject the six revised Form 499-As that would have resulted in credits to Ohio Bell, Michigan Bell and Indiana Bell, but accept revisions that resulted in additional contribution payments for those same companies, even though all such revisions were filed more than one year past the original deadline.⁷ SBC argued that USAC's decision was improper for several reasons: (1) USAC lacked authority to create substantive rules or policies governing the USF programs, and thus could not impose a one-year limit on submitting evidence of an overpayment; (2) USAC's disparate treatment of revisions to Forms 499-A based on whether they result in a credit or additional USF contributions was arbitrary and an abuse of discretion; and (3) USAC's decision was bad policy.

On December 9, 2004, in response to SBC's petition and petitions by approximately 20 other carriers, the Bureau released an order adopting, for the first time, a firm deadline for filing revisions to Form 499-As, but only for revisions that would reduce a carrier's contributions.⁸ Prior to that order, a contributor was required to submit a revised Form 499-A if it discovered errors on a previously submitted form, irrespective of when the errors were discovered or whether the errors would result in reduced or increased contributions. The only additional requirement was that, if a contributor discovered errors after December 1 of the same filing year, the contributor was required to submit an explanation of the cause for the change along with documentation showing how the revised figures were derived from corporate financial records.⁹

⁷ Appeal of Decisions of the Universal Service Administrative Company Concerning SBC Communications' Revision to Form 499-A and Application of Charges, CC Docket Nos. 96-45, 97-21 (filed Nov. 9, 2004).

⁸ *Form 499-A Modification Order* at paras. 1-3.

⁹ Instructions to the Telecommunications Reporting Worksheet, Form 499-A at page 11 (April 2004) ("Form 499-A Instructions"). In the *Form 499-A Modification Order*, the Bureau erroneously suggests that a contributor was not obligated to file a revised Form 499-A after the original December 1 deadline for filing revisions, stating that, "[i]f there is good cause to go beyond the December 1 deadline, a carrier *may* file a revision late if the revision is accompanied by an explanation of the cause for the change." *Form 499-A Modification Order* at para. 6 (emphasis added). In fact, such revisions were mandatory. Moreover, neither the Instructions to Form 499-A nor the

Although neither the Instructions to Form 499-A nor any Commission rule or order authorized any limits on accepting a revised Form 499-A more than one year past the original deadline, provided it included an explanation of the cause for the change and supporting documentation, USAC adopted processing guidelines pursuant to which USAC rejected any revised form filed more than one year after the original deadline if the revision reduced a contributor's universal service obligation.¹⁰

In the *Form 499-A Modification Order*, the Bureau acknowledged that the Instructions to Form 499-A and the Commission's rules and orders placed no limit on the submission of a revised Form 499-A, and thus that USAC had no authority to reject a revised form that decreased a carrier's contribution if it was submitted more than one year past the original deadline.¹¹ The Bureau therefore granted – in part – SBC's and other carrier's petitions for review, directing USAC “to consider if there was good cause to allow revisions [that reduce a carrier's contributions to federal support mechanisms] beyond the deadline contained in the instructions,” which the Bureau claimed was the “standard currently in effect.”¹²

The Bureau went on, however, to adopt a twelve-month deadline for filing revisions to the Form 499-A that would result in decreased contributions for prior years¹³ – the Bureau imposed no comparable limitation on the obligation to file revisions that would result in increased contributions. The Bureau sought to justify this deadline on the grounds that it would

Commission's rules and order provided that revisions more than one year past the deadline must demonstrate good cause for going beyond the deadline. Rather, the Instructions state only that a “[r]evision filed after [the deadline] must be accompanied by an explanation of the cause for the change.” Form 499-A Instructions at page 11.

¹⁰ *Form 499-A Modification Order* at para. 7, citing Universal Service Administrative Company, Board of Directors Meeting, July 27, 1999 Minutes, <http://www.universalservice.org/board/minutes/board/072799.asp>.

¹¹ *Id.* at para. 13.

¹² *Id.* Insofar as the Bureau directed USAC to accept revisions only where there is “good cause,” the Bureau imposed a standard for accepting revisions that currently is not incorporated into the Commission's rules and orders or in the Form 499-A Instructions. As noted above, the Form 499-A Instructions require only that a revision explain the cause for the change – they do not say that there must be good cause, nor do they offer any explanation of what constitutes “good” cause. Form 499-A Instructions at 11.

¹³ *Form 499-A Modification Order* at 10.

“improve administrative efficiency” and “help ensure the stability and sufficiency of the federal universal service fund” by reducing the need for adjustments for a given contribution year.¹⁴ The Bureau further asserted that 12 months is sufficient for contributors to revise their Form 499-A filings for purposes of reducing their contribution obligations.¹⁵ However, the Bureau offered no explanation why it limited the “firm” deadline for filing revised Form 499-As only to revisions that would reduce a carrier’s contributions, nor did it explain why the factors it cited as support for a firm deadline do not apply equally to revisions that would increase a carrier’s contributions.

The Bureau acknowledged that it only has delegated authority to make changes to administrative aspects of the Form 499-A reporting requirements, and not to change the substance of the underlying programs. The Bureau claimed, however, that it had authority to adopt the foregoing deadline because, the Bureau asserted, the deadline constituted a procedural, non-substantive change to the Form 499-A reporting requirements.¹⁶ The Bureau further asserted that, because the new, firm deadline purportedly is procedural, the notice and comment requirements of section 553 of the Administrative Procedure Act (“APA”) do not apply.¹⁷

III. ARGUMENT.

The Bureau’s decision to impose a firm deadline for revisions that would reduce a carrier’s contributions, but not for revisions that would increase contributions, is not only beyond the Bureau’s authority, but also arbitrary and capricious and bad policy. Moreover, the Bureau’s remand to USAC of SBC’s six revised Form 499-As with directions to accept those filings only “if there is good cause to allow revisions beyond the deadline contained in the Instructions” is inconsistent with the rules and Instructions applicable to such revisions in effect at the time those revisions were filed. The Commission therefore should reverse the Bureau’s decision to

¹⁴ *Id.*

¹⁵ *Id.* at para. 11.

¹⁶ *Id.* at para. 9.

¹⁷ *Id.*, citing 5 U.S.C. § 553(b)(3)(A).

prospectively impose a firm deadline on Form 499-A revisions that would result in reduced contributions, and direct USAC to accept SBC's and other carriers' Form 499-A revisions insofar as those revisions included the requisite explanations and documentation.

A. The Firm Deadline Adopted by the Bureau is a Substantive Rule, and Therefore Beyond the Bureau's Authority.

As the Bureau itself acknowledged, it possesses no authority to establish substantive rules or policies governing the USF and other universal service support programs, including substantive rules relating to contributor reporting requirements.¹⁸ In the *Second Order on Reconsideration*, the Commission adopted section 51.711 of the Commission's rules, requiring carriers to report revenue information to USAC.¹⁹ In that same order, the Commission delegated authority to the Bureau to waive, reduce or eliminate contributor reporting requirements associated with the universal service support program.²⁰ In a subsequent order, the Commission adopted a new consolidated form – FCC Form 499-A – for reporting carrier revenues,²¹ and reaffirmed its delegation of authority to the Bureau to modify contributor reporting requirements.²² The Commission also made clear that this delegation was narrowly circumscribed, emphasizing that it “extend[ed] only to making changes to the administrative aspects of the reporting requirements, not to the substance of the underlying programs.”²³

Despite the Commission's express and clear prohibition against the Bureau making substantive changes to the reporting requirements or adopting substantive rules, it has done just that in this case. While the Bureau contends that its decision to impose a firm, 12 month deadline on Form 499-A revisions that would decrease a carrier's USF contributions (but impose

¹⁸ *Form 499-A Modification Order* at para. 9.

¹⁹ *Second Order on Reconsideration*, 12 FCC Rcd at 18442, 18480.

²⁰ *Id.* at 18442.

²¹ *Form Consolidation Order* at para. 9.

²² *Id.* at para. 39.

²³ *Id.*

no comparable limitation on revisions that would increase a carrier's contributions) is only "procedural,"²⁴ in fact, its decision establishes a substantive rule that only may be adopted by the full Commission. Even then, the Commission could adopt such a rule only after complying with the notice and comment requirements of section 553 of the Administrative Procedures Act ("APA").²⁵

Section 553 of the APA generally requires agencies to afford notice of a proposed rulemaking and an opportunity for public comment prior to a rule's adoption, amendment or modification "to assure[] that the agency will have before it the facts and information relevant to a particular administrative problem, as well as suggestions for alternative solutions."²⁶ The Bureau correctly observes that the APA provides that "rules of agency organization, procedure, or practice" are exempt from these procedures.²⁷ However, as the D.C. Circuit repeatedly has admonished, the exceptions to section 553's notice and comment requirements must be narrowly construed to ensure that the exceptions do not defeat the purposes behind the APA's notice and comment requirements.²⁸ The D.C. Circuit has further cautioned that the "procedural rule"

²⁴ *Form 499-A Modification Order* at para. 10 n.31.

²⁵ 5 U.S.C. § 553.

²⁶ *American Hospital Ass'n. v. Bowen*, 834 F.2d 1037, 1044 (D.C. Cir. 1987) (*American Hosp. Ass'n*), citing *Guardian Federal Savings and Loan Ins. Corp.*, 589 F.2d 658, 662 (D.C. Cir. 1980); 5 U.S.C. § 553.

²⁷ *Form 499-A Modification Order* at para. 9, citing 5 U.S.C. § 553(b)(3).

²⁸ *Reeder v. FCC*, 865 F.2d 1298, 1305 (D.C. Cir. 1989) ("the APA's procedural rule exception is to be construed very narrowly"); *American Hosp. Ass'n*, 834 F.2d at 1044 ("Congress intended the exceptions to § 553's notice and comment requirements to be narrow ones. . . . In light of the obvious importance of the[] policy goals of maximum participation and full information, we have consistently declined to allow the exceptions itemized in § 553 to swallow the APA's well-intentioned directive."); *Alcaraz v. Block*, 746 F.2d 593, 612 (D.C. Cir. 1984) ("The exceptions to section 553 will be 'narrowly construed and only reluctantly countenanced.'" (citations omitted); *National Ass'n of Home Health Agencies v. Schwieker*, 690 F.2d 932, 949 (D.C. Cir. 1982) (exceptions to the notice and comment requirements in section 553 are to be recognized "only reluctantly," so as not to undermine the "salutary purposes behind [those requirements]"), *cert denied*, 459 U.S. 1205 (1983). The policies of maximum participation and full information that underlie the APA's notice and comment requirements squarely support application of those procedures here. For example, had the Commission solicited comment on the Bureau's proposed firm deadline, carriers could have pointed out the obvious regulatory asymmetry and lack of fairness that results from imposing a firm deadline only for revisions that would decrease contributions. Interested parties also could have offered other solutions that are symmetrical, but still meet the Bureau's objectives of administrative efficiency and certainty for the contribution system. For example, the Commission could adopt a solution similar to that of the Internal Revenue Service, which permits amended tax returns for three years, irrespective of whether they

exception does not apply where the agency action “encodes a substantive value judgment or *puts a stamp of approval or disapproval on a given type of behavior.*”²⁹

The Bureau’s adoption of a firm, 12 month deadline only for revisions that would decrease a carrier’s contributions to federal support mechanisms, with no corresponding deadline for revisions that would increase a carrier’s contributions, plainly “encodes a substantive value judgment” that “puts a stamp of approval or disapproval” on certain types of behavior. By affording disparate treatment to revisions depending on whether they would increase or decrease a carrier’s contribution, the Bureau’s decision plainly reflects a substantive, value judgment about which revisions should be accepted more than one year past the original filing deadline. The firm deadline adopted by the Bureau thus is more than a mere administrative or organizational measure. It is a decisional rule that directly affects contributors and the USF as a whole.

The Bureau cites the D.C. Circuit’s decision in *JEM Broadcasting Company* as support for its claim the “firm deadline” for certain Form 499-A revisions is procedural – indeed, the Bureau offers no other analysis or support for this conclusion. In that case, the D.C. Circuit held that the Commission’s “hard look” rules, which permitted amendments to broadcast license applications only during a 30-day window, were procedural and thus not subject to the APA’s notice and comment requirements.³⁰ However, the Commission’s “hard look” rules established a firm deadline for that applied across the board to all such amendments. Here, in contrast, the “firm deadline” adopted by the Bureau applies only to certain Form 499-A revisions but not

would increase or decrease a taxpayer’s tax payments, but imposes a penalty on amended returns that would increase a taxpayer’s payments to provide incentives for taxpayers to file accurate returns in the first place.

²⁹ *American Hosp. Ass’n*, 834 F.2d at 1047 (emphasis added); see also *Public Citizen v. Dept. of State*, 276 F.3d 634, 641 (D.C. Cir. 2002) (holding that a State Department policy of declining to produce documents produced after the date of a FOIA request was procedural because it “applie[d] to all FOIA requests, making no distinction between requests on the basis of the subject matter, [and therefore] it clearly encode[d] no ‘substantive value judgment’”) (citing *American Hosp. Ass’n*, 834 F.2d at 1047); *JEM Broadcasting Co. v. FCC*, 22 F.3d 320, 328 (D.C. Cir. 1994) (noting that the procedural exception does not apply where the agency’s decision “encodes a substantive value judgment”) (citations omitted); *Reeder v. FCC*, 865 F.2d at 1305.

³⁰ *JEM Broadcasting Company*, 22 F.3d 320.

others. As a consequence, the Bureau's citation to *JEM Broadcasting Company* is wholly inapposite.³¹

Because the Bureau's firm deadline "encodes a substantive value judgment" that approves some revisions but not others, the Bureau's adoption of that deadline was unauthorized and inappropriate. Even if a firm deadline only for revisions that decrease contributions were appropriate (which, as discussed below, it is not), adopting such a deadline would require action by the Commission, and, even then, only after following notice and comment procedures. The Bureau's adoption of the firm deadline thus not only exceeds its delegated authority, but also violates the Administrative Procedures Act and basic notions of due process under the Fifth Amendment of the U. S. Constitution.

Moreover, the firm deadline adopted by the Bureau conflicts with the Commission's rules, which expressly contemplate that carriers can obtain a refund of excessive contributions, without consideration of any time limit. In particular, section 54.713 of the Commission's rules provides that, "[o]nce a contributor complies with the Telecommunications Reporting Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interests, or costs."³² By denying carriers any opportunity to obtain a refund of overpayments to the USF, the Bureau's firm deadline conflicts with the express intent of the rules.

B. The Bureau's Decision is Arbitrary And An Abuse of Discretion

Even if the Bureau had authority to adopt a firm deadline Form 499-A revisions that would decrease a carrier's contributions, its decision is manifestly arbitrary, capricious, and

³¹ See *Public Citizen v. Dept. of State*, 291 F.3d at 641 (concluding that the Department's cut-off policy for FOIA requests did not encode a substantive value judgment because it applied to *all* FOIA requests without distinction); *JEM Broadcasting Company*, 22 F.3d at 328 (noting that the procedural exception to notice and comment does not apply where an agency's decision or policy encodes a substantive value judgment). Had the Bureau adopted a firm deadline for all revisions, regardless of whether they increased or decreased a carrier's contributions to federal support mechanisms, the deadline might well be properly characterized as "procedural" – a matter that SBC does not address here.

³² 47 C.F.R. § 54.713

unfair, and thus an abuse of discretion. As an initial matter, its policy is striking in its asymmetry. The Bureau's new deadline narrowly constrains a carrier's ability to revise its Form 499-As to accurately reflect its revenues if doing so would result in a reduction in that carrier's contribution base and thus a credit for overpayments to the universal service fund. At the same time, however, the Bureau applies no corresponding limit to revisions that would increase a carrier's contribution base, and thus its contributions to the fund. It is patently unfair to require a carrier to revise its Form 499-A more than one year past the original filing deadline if it would increase that carrier's contribution obligation, while strictly limiting the same carrier's ability to obtain a refund of overpayments to the universal service fund.

The Bureau justifies adoption of a firm deadline for revisions that would decrease a carrier's contributions on the grounds that a firm deadline will improve efficiency, help ensure the stability and sufficiency of federal support mechanisms, and provide incentives for carriers to submit accurate revenue information in a timely manner.³³ However, the Bureau cannot have it both ways. If a firm deadline is necessary to promote efficiency and ensure the stability of federal support mechanisms, it should apply to all revisions – irrespective of whether the revisions would increase or decrease a carrier's contributions.

C. The Bureau's Decision Is Bad Public Policy

The firm deadline adopted by the Bureau also will encourage carriers not to correct errors in reported revenues on their Form 499-As. To date, carriers have reported revenues to USAC with the expectation that they will receive credit for overpayments if they discover that they have over-reported revenues and made excess contributions.³⁴ If the Bureau's decision stands, carriers will be reluctant to review their Form 499-A filings from prior years and make any revisions to

³³ *Form 499-A Modification Order* at paras. 10-11.

³⁴ *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T, Report and Order and Order on Reconsideration*, 16 FCC Rcd 5748, 5733 at ¶12 (2001).

correct honest mistakes for fear that they will be liable for any underpayments but receive no credit for overpayments, undermining the integrity of the program.

The Bureau's new deadline also will result in substantial over-collection of USF contributions from certain carriers. For example, if the Bureau's policy applied to SBC's revisions, SBC would be forced to contribute almost \$2 million more than it was required to contribute based on its actual revenues. The Bureau's decision thus will result in significant over-payments of USF contributions over time, distorting the program contrary to the express statutory requirement that any USF support mechanisms be equitable and non-discriminatory.

D. The Bureau's Decision Is Inconsistent with the Existing Rules Governing Form 499-A Revisions.

In the *Form 499-A Modification Order*, the Bureau erroneously suggests that a contributor was required to demonstrate good cause for filing a revised Form 499-A after the original December 1 deadline for filing revisions.³⁵ And, based on this error, remanded SBC's and other carriers' Form 499-A revisions to USAC with directions "to consider if there was good cause to allow revisions [that reduce a carrier's contributions to federal support mechanisms] beyond the deadline contained in the instructions," which the Bureau claimed was the "standard currently in effect."³⁶

However, neither the Instructions to Form 499-A nor the Commission's rules and order provide that revisions more than one year past the deadline must demonstrate good cause for going beyond the deadline. Rather, the Instructions state only that a "[r]evision filed after [the deadline] must be accompanied by an explanation of the cause for the change."³⁷ Thus, under

³⁵ *Form 499-A Modification Order* at para. 6 ("If there is good cause to go beyond the December 1 deadline, a carrier may file a revision late if the revision is accompanied by an explanation of the cause for the change.").

³⁶ *Id.* at para. 13. Insofar as the Bureau directed USAC to accept revisions only where there is "good cause," the Bureau imposed a standard for accepting revisions that currently is not incorporated into the Commission's rules and orders or in the Form 499-A Instructions. As noted above, the Form 499-A Instructions require only that a revision explain the cause for the change – they do not say that there must be good cause, nor do they offer any explanation of what constitutes "good" cause. Form 499-A Instructions at 11.

³⁷ Form 499-A Instructions at page 11.

the rules in effect at the time SBC submitted its revisions, carriers were required only to explain the cause for the change and provide documentation, and the Bureau's direction to the USAC to accept revisions only where there is "good cause" imposed a standard for revisions that currently is not incorporated into the Commission's rules and orders or in the Form 499-A Instructions. Accordingly, the Commission should reverse the Bureau's decision, and direct USAC to accept SBC's and other carriers' Form 499-A revisions insofar as those revisions included the requisite explanations and documentation.

IV. CONCLUSION

In light of the foregoing, the Commission should reverse the Bureau's decision, direct the Bureau to adopt uniform deadlines for filing revisions to Form 499-As irrespective of whether they would increase or decrease a carrier's contributions to federal support mechanisms, and direct USAC to accept SBC's and other carriers' Form 499-A revisions insofar as those revisions included the requisite explanations and documentation.

Respectfully submitted,

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